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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 28-920867
Controlled Substance Excise Tax
For The Period: 1992

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ISSUES

I. Controlled Substance Excise Tax—Liability

Authority: IC 6-7-3-5; Bryant v. Indiana Department of State Revenue, 660 N.E.2d 290 (Ind. 1995); Clifft v.Indiana Department of State Revenue, 660 N.E.2d 310 (Ind. 1995); Hall v. Indiana Department of State Revenue, 660 N.E.2d 319 (Ind. 1995).

The taxpayer protests the assessment of controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession and delivery of marijuana on August 28, 1992, after an undercover agent had purchased marijuana from the taxpayer and her boyfriend on multiple occasions. After the arrest, the marijuana was tested and weighed. The weight was 1,410 in grams. The Department issued a jeopardy assessment against the taxpayer, and discussed the tax deficiency with the taxpayer on August 31, 1992. The taxpayer states that she pled guilty to the charges in June of 1993.

I. Controlled Substance Excise Tax—Liability

DISCUSSION

In Indiana, the manufacture, possession or delivery of marijuana is taxable. IC 6-7-3-5. Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. The taxpayer then bears the burden of proving that the proposed assessment is wrong.

The taxpayer argues that since she has served her criminal sanctions, the controlled substance excise tax (CSET) assessment violates the double jeopardy clause of the United States Constitution. U.S. Const. amend. V. (*See also* Ind. Const. art. I, Sec. 14). The double jeopardy clause protects, among other things, a person from being put in jeopardy more than once for the same offense. Our Supreme Court has held that the CSET assessment is considered jeopardy under Constitutional analysis, and that the jeopardy attaches when the assessment is served on the taxpayer. Bryant v. Indiana Department of State Revenue, 660 N.E.2d 290 (Ind. 1995); Clifft v. Indiana Department of State Revenue, 660 N.E.2d 310 (Ind. 1995).

Under the above framework, the Department's jeopardy attached when the Department sent out a jeopardy notice and demand on August 27, 1992, making it the first jeopardy and the criminal jeopardy second jeopardy—since the criminal jeopardy attached in June of 1993. Although the taxpayer argues that it is inequitable to assess CSET, it is nonetheless grounded in case law. In Hall v. Indiana Department of State Revenue, the Indiana Supreme Court ruled that CSET constituted the first jeopardy, the plea of guilty to the criminal charges the second. 660 N.E.2d 319 (Ind. 1995). In that case, police entered the home of the Keith Hall, finding over 300 lbs. of marijuana. Four days after the arrest, the Indiana Department of Revenue assessed Hall and his wife with a CSET assessment. After the assessment, Keith Hall pled guilty. The Indiana Supreme Court held that the CSET assessment was first in time, and that the conviction was the second jeopardy. Thus the criminal conviction, not the CSET assessment, violated the double jeopardy clause.

Given that the Department's jeopardy attached first, and the taxpayer has not overcome the *prima facie* burden of disproving possession, the protest is denied.

FINDING

The taxpayer's protest is denied.